BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2002-328-S - ORDER NO. 2003-382

JUNE 10, 2003

IN RE:	Application of Links Water Treatment, LLC for Approval of an Establishment of Rates and Charges for the Operation of a Sewer System and for Establishment of a Service Territory.	)))))	ORDER DENYING REHEARING

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Rehearing of this Links Water Treatment, LLC (Links or the Company) establishment proceeding by Warren Schmitt, an Intervenor in this case. A response to the Petition was filed by the Company. Because of the reasoning as stated below, the Petition is denied, although, as also explained below, partial clarification of the Order is granted.

First, Mr. Schmitt complains that, seemingly, the Commission ignored the testimony of the members of the public in this case. We must state that this is incorrect. All comments made by the public were made a part of the permanent record of this proceeding and were considered fully by us in our deliberations in this case. We always value the comments given to us by members of the public, and this case was no exception. The allegation is without merit.

Further, at least one of the members of the public, Mrs. Retha Higginbotham, stated that one of the owners of the Company, Mr. Steve Sandlin, had promised that the

residents of the Links O'Tryon subdivision (the proposed Links service area) would never pay more than a rate such as that charged to the customers of the Greer municipal system for sewer service from Links. However, Mrs. Higginbotham noted that Links had increased the quarterly rate for sewer service several times since Mr. Sandlin made that statement. We would note that the alleged promise from one of the owners of the Company does not bind this Commission in the area of the establishment of the proper rates to be charged by the Company. Anchor Point, Inc., et al. v. The Shoals Sewer Company and the Public Service Commission of South Carolina, 408 S.C. 422, 418 S.E. 2d 546 (1992) described a scenario where a sewer utility's rates had actually been set in a master deed. Controversy developed when Shoals' owners requested that the Commission establish a rate that was different from that found in the master deed. The Supreme Court held in that case that since the Company was a "public utility," the Commission could establish rates which would alter the master deed, under the state's police powers. 418 S.E. 2d at 550. Similarly, in the present case, a promise to the residents of the subdivision does not constrain this Commission from setting a rate for sewer service different from that contained in the promise for Links, which is clearly a public utility. Therefore, again, although we heard and appreciated the testimony from Mrs. Higginbotham and the other residents of the Links O'Tryon subdivision, we are not bound by any promises regarding the rates for sewer service that may have been made in the past by Links' officials in setting different rates that we believe are supported by the record in this case.

Second, Mr. Schmitt states that the legal expenses allowed to the Company were never specifically identified as to what they were for, when and to whom they were paid, who paid them and for whose benefit they were incurred. Mr. Schmitt further notes that the legal expenses were not requested in the Company's application but were added by the Commission. Mr. Schmitt asks why the expenses were included, under these circumstances. Links, in its reply to Mr. Schmitt's Petition, points out that the Staff auditor, Sharon Scott, testified that the legal fees included in the expense calculations were related to these proceedings and were considered reasonable. Scott also provided the Commission with alternate amortization periods. The Commission adopted a five-year amortization period for these expenses so as to minimize the short-term effect on the ratepayer. Order No. 2003-236 at 5. Mr. Schmitt's propounded questions on this issue are answered in the testimony of Ms. Scott and in Order No. 2003-236. Therefore, the allegations regarding legal expenses are without merit.

Third, the Intervenor alleged that the accounting records of the utility were mixed in with the accounting records of the real estate partnership, thus making the source of utility expenses paid unidentifiable. Also, Mr. Schmitt states that no tax returns of either entity were examined. As pointed out by the Company in its response to the Petition, Staff Auditor Scott audited the expenses of Links and made detailed findings and adjustments. In addition, there was sworn testimony from the Company's witnesses as to the necessity for and amounts of expense. Further, as Links points out, there is no requirement that tax returns be reviewed or made a part of the record. We believe that the evidence provided by Staff auditor Scott and by the Company was sufficient to support

our holdings on revenue and expenses as shown in Order No. 2003-236. In other words, the Staff and Company were able to differentiate between expenses for the utility and expenses for the real estate partnership to the point where this Commission was able to set rates accordingly. This allegation by the Intervenor is therefore without merit.

Fourth, Mr. Schmitt notes that in determining rates, the Commission made no provision for future additions of homes. Mr. Schmitt goes on to request that the rates be automatically adjusted downward for any new homes that might be added in the future. We decline to adopt the proposal. This Commission does not generally allow for automatic adjustment of rates but must examine all the circumstances existing for a particular time frame. For example, in this case, there may be other changes in expenses at a given point in time that could mandate a change in rates, rather than a simple decrease due to the addition of a home to the system. Accordingly, we decline to adopt Mr. Schmitt's "automatic decrease" proposal. It is inconsistent with appropriate ratemaking principles. See S.C. Code Ann. Section 58-5-240 (Supp. 2002) with regard to rate changes. See also S.C. Code Ann. Section 58-5-240(A) (Supp. 2002) which states in part: "...proposed changes must not be put into effect in full or in part until approved by the Commission."

Fifth, Mr. Schmitt notes that Order No. 2003-236 at 9 states, "We cannot ask the present customers of the system to pay for the maintenance of the plant," yet the Order makes no adjustment for the maintenance fees of $1,508 included in the expenses. A clarification of this statement is in order. It should be stated that it was not our intent to eliminate the maintenance fees from the expenses of the Company in this case but merely

to support our position that the plant may be overbuilt for the number of customers presently being serviced. On page 10 of Order No. 2003-236, we ordered the Commission Staff to look into a retrofit of the sewer plant to determine if the operating costs of the plant could be reduced in view of the amount of overcapacity. We reiterate that holding in this Order and ask that Staff proceed with its review. We do believe that it may be possible to reduce maintenance fees in the future; however, until Staff is able to perform the study and report the findings to the Commission, we have no basis at this time for quantifying what maintenance fees should be disallowed. The $1,508 figure is all that is available at present. In Order No. 2003-236, we found this amount to be a reasonable amount of maintenance expense. However, this Commission directed the Staff to look further into this category, and we direct the Staff to conduct a review and report the findings to the Commission.

Sixth, the Intervenor complains that no penalty was applied to the operator of the system, even though the operator did not comply with the law. Among other things, Links notes in its reply that the current ownership of Links did not disregard its legal operations, since once it obtained a controlling interest in the facility and realized that there was no Commission authority in place, it immediately sought legal counsel and spent significant time and thousands of dollars in legal expenses to meet full compliance with the law. We agree with Links. Although this Commission does not condone the Company's actions in formerly charging rates without the approval of this Commission, this Commission did not apply a penalty in the case, due to the effort shown by the

Company in ultimately coming into compliance with Commission requirements. This allegation of error is therefore without merit.

Seventh, Mr. Schmitt alleges as error that the DHEC permit cost of $530 was included in full. He raises a question as to why this amount was not amortized, since he reasons that the permit covers 4 or 5 years. As pointed out by Links, however, there was no evidence presented at the hearing that this fee was anything other than an annual fee; therefore, no amortization of this expense was proper. We therefore find that Mr. Schmitt's point has no merit.

Eighth, Mr. Schmitt states that the Links customers are being penalized by the alleged fact that a septic tank costing about $2,500 would provide the Company's sewer customers with an adequate waste disposal system. However, Mr. Schmitt alleges that the South Carolina Department of Health and Environmental Control (DHEC) rules forbid the customers that alternative, since they are being served by a sewer system. As pointed out by Links, this is a matter under the jurisdiction of DHEC and outside the jurisdiction of this Commission. This Commission has no ability to address this matter. Thus, this allegation is also without merit.

Accordingly, because of the reasoning as stated above, the Petition for Rehearing is denied, and Order No. 2003-236 is reaffirmed as clarified. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Mignon L. Clyburn, Chairman

ATTEST:

Gary E. Walsh, Executive Director

(SEAL)